

**CASE NO.**

**VOLUME**

**PAGE**

Cite as: MacDonell v. M & M Developments Ltd., 1998 NSCA 49

JOSEPH A. MacDONELL

M & M DEVELOPMENTS LIMITED

- and -

(Appellant)  
(Respondent by Cross Appeal)

(Respondent)  
(Appellant by Cross Appeal)

C.A. No. 141738

Halifax, N.S.

HALLETT, J.A.

APPEAL HEARD:

January 13, 1998

JUDGMENT DELIVERED:

February 9, 1998

SUBJECT:

- (i) **Non-suit motions**
- (ii) **Trespass to Real Property**
- (iii) **Statute of Limitations**, R.S.N.S. 1989, c. 258, ss. 10, 11, 20 and 31
- (iv) **Fiduciary Duties of a Solicitor**
- (v) **Solicitor and Client Costs**

SUMMARY:

The plaintiff was the defendant's solicitor and its president. The defendant owns a large property on Grand Lake. In September/October, 1994, while acting for the defendant as its solicitor, the plaintiff concluded that his ancestors, owned a portion of the lands the defendant considered that it owned. The plaintiff had grown up in the Grand Lake area and practiced law in the area.

Having come to this conclusion, the plaintiff did not immediately advise the defendant that (i) he would be asserting title to the lands; and (ii) he could not continue to act for the defendant because of the conflict. The plaintiff had decided to await the scheduled visit to Nova Scotia on November 4th, 1994, of Mr. Menger, to advise him of the conflict. Apparently Mr. Menger, who lives in Germany, controls M&M and is the voice of M&M. On November 4th, when Mr. Menger arrived at his Monte Vista Farm, the plaintiff advised the defendant of the conflict. In the meantime, the plaintiff had contacted several heirs to ascertain if they would execute deeds without warranties to him. The plaintiff subsequently acquired deeds from a number of MacDonell family members. He commenced an action in trespass against M&M in 1995.

M&M asserts it has title to the lands in dispute. M&M joined the lawyers who acted for it when the property in dispute was purchased. M&M claimed indemnity from the lawyers. M&M also counterclaimed against the plaintiff for breach of fiduciary duty and sought a wide assortment of

remedies.

At the conclusion of the plaintiff's evidence defence counsel made a non-suit motion which was granted by the trial judge. The defendant then elected to make submissions on its counterclaim relying on evidence of the plaintiff given under cross-examination by the defendant's counsel.

In a written decision the trial judge found that the plaintiff breached his fiduciary duties by failing to make full and timely disclosure to M&M of his conflict.

On appeal by the plaintiff, this Court held that the trial judge erred in granting the non-suit motion by failing to properly determine, according to law, if the plaintiff's action was barred by the Statute of Limitations and as a consequence erred in finding the plaintiff was a trespasser on M&M's lands.

The Appeal Court rejected the plaintiff's ground of appeal that the trial judge erred in finding the plaintiff breached his fiduciary duties to M&M.

The Appeal Court dismissed M&M's cross-appeal which alleged that the trial judge erred in refusing to award M&M solicitor and client costs.

The Appeal Court remitted to the trial judge the plaintiff's and the defendant's respective claims to ownership of the disputed lands and M&M's claim against the third party.

The Court of Appeal set aside the trial judge's order respecting costs and ordered that trial costs paid by the plaintiff be repaid to him forthwith.

The Court awarded the plaintiff costs of the appeal and ordered that the trial costs would be determined by the trial judge following a determination by him of the issues remitted.

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